

Tuesday, March 8, 2006

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Mr. Chiang, Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

**PETITION FOR RELEASE OF SEIZED PROPERTY**

A & M Jelvah, Inc., 317780 (AC)

May 23, 2005 Notice of Seizure and Forfeiture, \$404.67 Approximate Value

For Petitioner: Mehrdad Lavi, Taxpayer

For Property and Special Taxes Department: Tim Treichelt, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the cigarettes should be forfeited to the State of California because they are described by subdivision (b) of Revenue and Taxation Code section 30436, or subdivision (a) of Business and Professions Code section 22974.3.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be submitted for decision.

**SALES AND USE TAX APPEALS HEARINGS**

Man Than Ngo, 288757 (EHC)

7-1-00 to 5-20-02, \$44,916.80 Tax, \$4,492.59 Negligence Penalty

For Petitioner: Nate Green, Representative

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the audited shelf test markup of 8.82 percent is excessive.

Whether petitioner has presented sufficient evidence to show that he made exempt sales of Asian food products.

Whether petitioner has presented sufficient evidence that the unreported taxable sales should be based on either the FITR's or bank deposits.

Whether petitioner was negligent.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Brenton Motor Works, Inc., 252420 (FH)

5-9-00 to 3-31-02, \$88,399.18 Tax

For Petitioner: Mitchell B. Dubick, Attorney

Sherri Morris, Attorney

Shaundra L. Flanigan, Witness

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that the audited understatement of reported taxable sales is excessive.

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Whether adjustment is warranted to the amount of disallowed claimed and netted nontaxable and exempt sales.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board allowed a 3 percent void rate and ordered that the remainder of the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

**William Lyon Homes, 240354 (EAA)**

7-1-99 to 9-30-02, \$191,869.40 Tax, \$20,047.02 Negligence Penalty

For Petitioner: W. Douglas Harris, Taxpayer  
Jim Fier, Representative  
Lyle A. Downey, Representative  
For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying Contributions disclosed.

Issues: Whether petitioner made a taxable use of furnishings to enhance its sale of homes prior to reselling the furnishings.

Whether petitioner's sales of furnishings were subject to sales tax.

Whether petitioner was negligent, such that the 10 percent negligence penalty is appropriate.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Walter Alexander Aguilar, 181561 (AP)**

4-1-97 to 3-31-00, \$41,954.51 Tax, \$00.00 Negligence Penalty

For Petitioner: Walter Aguilar, Taxpayer  
Roberta Vasquez, Witness  
Linda Perez, Bookkeeper  
For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is entitled to additional adjustment because unreported taxable sales based on reported and recorded taxable sales are excessive.

Whether petitioner has provided evidence to show that additional adjustment to the tax liability established from missing report of sales issued by the Department of Motor Vehicles is warranted.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 10:55 am and reconvened at 11:05 am with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

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**FINAL ACTION ON PETITION FOR RELEASE OF SEIZED PROPERTY HEARD  
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A &amp; M Jelvah, Inc., 317780 (AC)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish abstaining, Mr. Chiang not participating, the Board determined that staff properly seized the cigarettes.

Mr. Leonard presented three draft proposals of new language regarding counterfeit cigarette seizures to give taxpayers notice that the Board of Equalization has no legal authority to return counterfeit cigarettes or cigarettes without valid California Tax Stamps unless the cigarettes are seized illegally or erroneously (Exhibit 3.14).

Mr. Parrish directed staff to define cigars and other tobacco products.

Mr. Chiang directed the Department to report to the Board regarding the action it plans to take on the matter.

Exhibits to these minutes are incorporated by reference.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MARCH 8,  
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Man Than Ngo, 288757 (EHC)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Walter Alexander Aguilar, 181561 (AP)

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered the petition be redetermined in accordance with the revised recommendation of the Appeals Division.

**SALES AND USE TAX APPEALS HEARING**

Ultraneon Sign Corporation, 187084 (FH)

10-1-97 to 12-31-00, \$28,720.75 Tax

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the audited understatement of materials consumed on construction contracts is excessive.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish not participating, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

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**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD MARCH 8, 2006**

William Lyon Homes, 240354 (EAA)

Final Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Chiang, Mr. Parrish and Mr. Leonard voting yes, Ms. Yee and Ms. Mandel voting no, the Board ordered that the negligence penalty be deleted, otherwise redetermined as recommended by the Appeals Division.

The Board recessed at 11:15 a.m. and reconvened at 1:00 p.m. with Mr. Chiang, Mr. Leonard, Ms. Yee and Ms. Mandel present.

**SALES AND USE TAX APPEALS HEARINGS**

A K H Company, Inc., 219583 (EA)

4-1-99 to 3-31-02, \$474,819.77 Tax

For Petitioner:

Vatche Chorbajian, Attorney

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is liable for use tax on the cost of merchandise withdrawn from resale inventory for consumption.

Whether petitioner is liable for sales tax on its sales of equipment.

Whether petitioner underreported its taxable sales.

Whether the disallowance of some claimed bad debts is appropriate.

Action: Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the tax be redetermined without adjustment, and that petitioner be offered a two-year installment payment plan.

Conexant Systems, Inc., 152709, 286414 (EAA)

4-1-98 to 6-30-02, \$195,000.00 Claim for Refund

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the semiconductor test equipment claimant purchased and took delivery of in Japan was purchased for use in California.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, Mr. Parrish absent, the Board ordered that the petition and claim for refund be granted in accordance with the revised recommendation of the Sales and Use Tax Department.

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John G. Harb, 221375 (AS)

John Harb Sewing Machine Company, Inc., 217117 (AS)

10-1-93, \$56,961.80 Tax, \$00.00 Fraud Penalty

For Petitioner:

Sam White, Representative

For Sales and Use Tax Department:

Tim Treichelt, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioners have provided sufficient evidence to show that the tax liability attributable to disallowed claimed exempt and non-taxable sales is excessive.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Starwood Hotels/Resorts Worldwide, Inc., 250677 (FH)

4-1-97 to 3-31-02, \$288,337.00 or more Claim for Refund

Starwood Hotels/Resorts Worldwide, Inc., 250678 (EHC)

4-1-97 to 3-31-02, \$1,588,432.00 Claim for Refund

SLC Operating Limited Partnership, 250675 (EHC)

7-1-97 to 3-31-02, \$2,900,000.00 or more Claim for Refund

SLC San Diego, LLC, 250468 (FH)

10-1-97 to 3-31-02, \$2,430,367.00 Claim for Refund

For Claimant:

Appearance Waived

For Sales and Use Tax Department:

Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issue: Whether claimant is entitled to a refund of tax paid on various transactions.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

## PUBLIC HEARINGS

### Business Taxpayers' Bill of Rights Hearings

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Business Taxpayers' Bill of Rights Hearing.

Speakers:

William Matthew Connell, All American Surf Dogs

Nagi S. Iskander, Owner, Cool Mart

Hany R. Ghobrial, Manager, Stop-N-Go

### Property Taxpayers' Bill of Rights Hearings

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Property Taxpayers' Bill of Rights Hearing.

Speakers were invited to address the Board, but there were none.

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**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD MARCH 8, 2006**

John G. Harb, 221375 (AS)

John Harb Sewing Machine Company, Inc., 217117 (AS)

Final Action: Mr. Leonard moved to redetermine for the corporation and grant for the petitioner. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 2:20 p.m. in memory of the following: Sam Chu Lin, member of Mr. Chiang's staff and veteran California broadcaster; Honorable Mas Fukai, former Council Member of the City of Gardena; and Honorable Judge Robert Sandoval, Los Angeles County Superior Court.

*The foregoing minutes are adopted by the Board on June 27, 2006.*

Note: The following cases were removed from the calendar prior to the meeting: *Kenneth H. Lawson, 132581*; *Perfect PC Technologies, Inc., 258181*; *Canyon Motors, Ltd., 219451*; and, *American Reprographics Company, LLC, 254516*.